

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**SANDRA L. STEVENS, on behalf of
the ESTATE OF NICHOLAS VANBUREN,**

Plaintiff,

v.

**Civil Action No.: 5:24-cv-191
Judge Frank W. Volk**

**PRIMECARE MEDICAL, INC.,
PRIMECARE MEDICAL OF WEST
VIRGINIA, INC.,
JOHN/JANE DOE PRIMECARE
EMPLOYEES,**

Defendants.

**DEFENDANT, PRIMECARE MEDICAL OF WEST VIRGINIA, INC.'S,
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**

Comes Now Defendant, PrimeCare Medical of West Virginia, Inc. by counsel, Mark R. Simonton, Anne Liles O'Hare, Elijah S. Stevens, and the law firm of Offutt Simmons Simonton, PLLC, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and respectfully requests that this Court enter an Order dismissing Plaintiff's claims against PrimeCare Medical of West Virginia, Inc., as set forth in her *First Amended Complaint*. In support of said Motion, PrimeCare Medical of West Virginia, Inc., states as follows:

1. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted as to PrimeCare Medical of West Virginia, Inc., because the claims asserted against PrimeCare Medical of West Virginia, Inc., were pled outside of the applicable statute of limitations.

WHEREFORE, for the foregoing reasons, Defendant, PrimeCare Medical of West Virginia, Inc., requests that this Honorable Court enter an Order dismissing the claims included in Plaintiff's First Amended Complaint against it, as more fully set forth in the memorandum of law submitted contemporaneously herewith, as well as any and all other relief that this Court deems just and proper.

**PRIMECARE MEDICAL OF WEST
VIRGINIA, INC.**

By Counsel,

/s/ Mark R. Simonton, Esquire

Mark R. Simonton, Esquire (WV Bar #13049)

Anne Liles O'Hare, Esquire (WV Bar #9171)

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CERTIFICATE OF SERVICE

I, Mark R. Simonton, counsel for Defendant, PrimeCare Medical of West Virginia, Inc., do hereby certify that, on the 26th day of **July, 2024**, I served a true and correct copy of the foregoing “*Defendant, PrimeCare Medical of West Virginia, Inc.’s, Motion to Dismiss Plaintiff’s First Amended Complaint*” with the Clerk of the Court using the CM/ECF system which shall send notice of the same to the following:

Stephen P. New, Esquire
Emilee B. Wooldridge, Esquire
Stephen New & Associates
430 Harper Park Drive
Beckley, WV 25801

/s/ Mark R. Simonton, Esquire
Mark R. Simonton, Esquire (WV Bar #13049)